

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

TEAMSTERS LOCAL UNION NO. 2,
Complainant,
-vs-
CASCADE COUNTY,
Defendant.

* * * * *

On April 13, 2010, Teamsters Local Union No. 2, hereinafter Local 2 or Union, filed an unfair labor practice charge with the Board of Personnel Appeals alleging that Cascade County, hereinafter County, refused to process a grievance to arbitration. Violations of 39-31-401(1), (5) and 39-31-201 MCA are alleged. Local 2 is represented in this matter by Patrick McKittrick, attorney at law. Cascade County timely responded to the charge through its Deputy County Attorney Brian Hopkins and denied that an unfair labor practice had been committed.

II. Background and Discussion

The facts of this case are straightforward. The Union is grieving a hiring decision of the County wherein a bargaining unit member, after interviewing for a vacant position, was not offered the position. The Union alleges a violation of the existing collective bargaining agreement and has grieved the decision up to and including a March 26, 2010, letter wherein Local 2 notified the County that it was advancing the grievance to final and binding arbitration. The County responded to the request on April 5, 2010, and, while retaining its position on management rights, offered to arbitrate the matter in a two tiered manner. This prompted the Union to file the instant unfair labor practice complaint.

1 The Montana Supreme Court has approved the practice of the Board of Personnel
2 Appeals using Federal Court and National Labor Relations Board precedent as guidelines
3 in interpreting the Montana Collective Bargaining for Public Employees Act as the State
4 act is so similar to the Federal Labor Management Relations Act, State ex rel. Board of
5 Personnel Appeals v. District Court, 183 Mont 223, 598 P.2d 1117, 103 LRRM 2297;
6 Teamster's Local Union No. 45 v. State ex rel. Board of Personnel Appeals, 195 Mont 272,
7 635 P.2d 1310, 110 LRRM 2012; City of Great Falls v Young (Young III) 211 Mont 13, 686
8 P.2d 185, 119 LRRM 2682. In ULP 43-81, William Converse v Anaconda Deer Lodge
9 County and ULP 44-81 James Forsman v Anaconda Deer Lodge County, August 13,
10 1982, the Board of Personnel Appeals adopted National Labor Relations Board precedent
11 set forth in Collyer Insulated Wire, 192 NLRB 387, 77 LRRM 1931, deferring certain unfair
12 labor practice proceedings to an existing negotiated grievance/arbitration procedure.
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15 The charge of Local 2 presents a scenario where the parties have a longstanding and
16 stable history of bargaining. There is a willingness on the part of management to arbitrate
17 this matter. The Union is equally willing to arbitrate, although it does not agree with the two
18 tiered arbitration methodology proposed by the County. This procedural disagreement is
19 not sufficient cause for the Board of Personnel Appeals to hear the matter and other than
20 this one issue there are no other apparent reasons why the Board should hear this case.
21 In this regard Board precedent, ULP 19 and 38-88, Teamsters Local No. 190 vs. City of
22 Billings, is most instructive. It not only addresses the long history of the use of arbitration
23 to resolve differences and the rationale for deferral but it also adopts the proposition that,
24 procedural arbitrability questions are best resolved using the negotiated dispute resolution
25 machinery. In short, arbitration can resolve this matter and the arbitrator is in the best
26 position to resolve any procedural disputes that arise.
27

28 29 **III. Recommended Order**

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31 It is hereby recommended that the above matter be deferred to arbitration. To eliminate
32 the risk of prejudice to any party the Board of Personnel Appeals retains jurisdiction over
33 this matter for the purpose of entertaining an appropriate and timely motion for further
34 consideration upon a proper showing that either the dispute has not, within a reasonable
35 time, been resolved pursuant to the parties' negotiated grievance/arbitration procedure; or
36 the grievance/arbitration proceedings have not been fair and regular or have reached a
37 result which is repugnant to the Montana Collective Bargaining for Public Employees Act.
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40 Dated this 3rd day of May 2010.
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43 BOARD OF PERSONNEL APPEALS
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47 By: _____
48 John Andrew
49 Investigator
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3 SPECIAL NOTICE

4 Exceptions to this Recommended Order may be filed within twenty (20) days of service
5 thereof. If no exceptions are filed, this Recommended Order shall become the Order of
6 the Board of Personnel Appeals. Address exceptions to the Board of Personnel Appeals,
7 P.O. Box 201503 Helena, Montana 59620-1503.
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11 CERTIFICATE OF MAILING
12

13 I, _____, do hereby certify that a true and correct
14 copy of this document was mailed to the following on the _____ day of May, 2010,
15 postage paid and addressed as follows:
16

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18 D PATRICK MCKITTRICK
19 ATTORNEY AT LAW
20 PO BOX 1184
21 GREAT FALLS MT 59403
22

23 BRIAN J HOPKINS
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